

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
HANSEN, HANSEN & JOHNSON and
CRYSTAL MOUNTAIN, INC.,

Appellants,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB Nos. 85-256 and
85-257

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

THIS MATTER, the appeals of a Notice and Order of Civil Penalty for \$1,000 for violation of the state and federal regulations regarding removal of hazardous asbestos material, came on for hearing before the Board; Lawrence J. Faulk (presiding), Wick Dufford and Gayle Rothrock on March 24, 1986, at Seattle, Washington. Respondent PSAPCA elected a formal hearing, pursuant to RCW 43.21B.230. Bibi Carter, court reporter of Gene Barker and Associates officially reported the proceedings.

1 Separate Notices of Appeal were taken by appellant, Hansen, Hansen
2 & Johnson (under PCHB No. 85-256) and Crystal Mountain, Inc., (under
3 PCHB No. 85-257) to the issuance of Civil Penalty No. 6369. The
4 issues and the subject matter of both Notices of Appeal were the same,
5 and therefore the appeals were consolidated for hearing.

6 Appellants appeared through Tom Leonard, president of Crystal
7 Mountain, Inc. and Scott Sienkiewich of Hansen, Hansen & Johnson.
8 Respondent PSAPCA appeared and was represented by its attorney, Keith
9 D. McGoffin.

10 Witnesses were sworn and testified. Exhibits were admitted and
11 examined. Argument was heard. From the testimony, evidence, and
12 contentions of the parties, the Board makes these

13 FINDINGS OF FACT

14 I

15 Respondent PSAPCA, an activated air pollution control authority,
16 has filed with this Board a certified copy of its Regulation I and all
17 amendments thereto, of which we take official notice.

18 II

19 Appellant Crystal Mountain, Inc. is a ski resort in the Cascade
20 Mountains in Pierce County, Washington. Appellant Hansen, Hansen &
21 Johnson is a contractor, who was hired by Crystal Mountain, Inc. to
22 remodel the day lodge building at the resort. An early step in that
23 process was to remove the existing ceiling insulation.

24 III

25 On July 1, 1985 at 12.58 p.m., a PSAPCA inspector arrived at the

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1 Crystal Mountain job site and, thereupon conducted an inspection.
2 Photographs and samples of ceiling debris were taken. The
3 investigation was prompted by a Department of Labor and Industries
4 report which on a quick analysis of the same type of sample collected
5 on June 26, 1985, estimated that the material was composed of as much
6 as 25 percent asbestos. PSAPCA records indicated they had never been
7 notified about the intent to remove asbestos from the Crystal Mountain
8 Lodge.

9 IV

10 The inspection indicated that construction personnel were being
11 exposed to the asbestos-laden ceiling debris as the material was loose
12 on the floor. No wetting of the asbestos had occurred either before
13 or after its removal. Personnel in the new construction area were
14 working with an air cleaner which was blowing the asbestos debris into
15 the ambient air. None of the personnel being exposed to the asbestos
16 were wearing respiratory protection. The general public walking past
17 the construction area on their way to the mountain trail were exposed
18 to asbestos. The asbestos debris was not contained and dust was
19 visible in the air in and around the work area. The ceiling had an
20 asbestos cover which was removed to put in new beams. Approximately
21 300 square feet had been removed and was loose on the floor. A small
22 amount of debris had been put into green bags.

23 V

24 The regulations were explained to Thomas Leonard of Crystal
25 Mountain and Scott Sienkiewich, foreman for Hansen, Hansen, & Johnson,
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1 who were present at the site. The job was shut down because of the
2 risk to the workers from exposure. Subsequently the building was
3 sealed so that the asbestos would be contained, and work then was
4 resumed in outdoor areas. A specialized asbestos removal contractor
5 was hired to finish the removal job in the lodge using the proper
6 precautions. About a week of construction time was lost due to these
7 actions.

8 VI

9 On July 18, 1985, PSAPCA mailed Notices of Violation Nos. 20846,
10 20848, 20849, 20850, and 20851 to Crystal Mountain, Inc. and Hansen,
11 Hansen & Johnson for alleged violation of WAC 173-400-075 (Emission
12 Standards for Sources Emitting Hazardous Air Pollutants) and 40 CFR,
13 61.146, 61.147, 61.152 Part 61 (standards for demolition and
14 renovation involving asbestos).

15 VII

16 On November 8, 1985, PSAPCA mailed Notice and Order of Civil
17 Penalty No. 6369 for \$1,000 to Crystal Mountain, Inc. and Hansen,
18 Hansen, & Johnson, alleging five distinct violations of the applicable
19 asbestos work practices. The Notices were received November 12,
20 1985. On December 11, 1985, Hansen, Hansen, & Johnson filed an appeal
21 of the civil penalty, becoming our cause number PCHB 85-256. On
22 December 12, 1985, Crystal Mountain, Inc. filed an appeal of the civil
23 penalty becoming our cause number PCHB 85-257.

24 VIII

25 About a year before the events at issue, in anticipation of the
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1 day lodge renovation, Crystal Mountain directed its consulting
2 engineers to secure an analysis of the ceiling insulation. The
3 laboratory used reported that the sample they analyzed contained less
4 than one (1) percent chrysotile asbestos.

5 The evidence did not show precisely by whom the sample was taken,
6 whether it was fairly representative or what if any precautions were
7 taken in its transmission to the laboratory.

8 However, both the resort and its contractors relied on the results
9 and, therefore, employed no special precautions in initially tackling
10 removal of the ceiling. As soon as they became aware of the asbestos
11 risk, they responded promptly and responsibly to minimize the dangers
12 involved.

13 IX

14 The samples collected by PSAPCA were submitted for thorough
15 analysis to a qualified laboratory in Massachusetts. The report,
16 received in late July 1985, identified the material as containing 15%
17 chrysotile asbestos. The agency followed standard procedures
18 regarding chain of custody and care of the samples taken.

19 X

20 Asbestos is one of only six pollutants classified federally as a
21 "hazardous air pollutant." The term describes a substance which

22 causes, or contributes to, air pollution which
23 may reasonably be anticipated to result in an
24 increase in mortality or an increase in
serious irreversible, or incapacitating
reversible, illness.

25 Asbestos then, is very dangerous indeed. It is subject to a special

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1 set of work procedures and emission limitations (under Section 112 of
2 the Federal Clean Air Act) called National Emission Standards for
3 Hazardous Air Pollutants. The threshold for regulation is any
4 material containing more than one (1)% asbestos.

5 XI

6 Any Conclusion of Law hereinafter determined to be a Finding of
7 Fact is hereby adopted as such.

8 From these Facts, the Board comes to these

9 CONCLUSIONS OF LAW

10 I

11 The Board has jurisdiction over these persons and these matters.
12 Chapters 70.94 and 43.21B RCW.

13 II

14 The Legislature of the state of Washington has enacted the
15 following policy regarding cooperation with the Federal government,
16 which reads in relevant part:

17 It is the policy of the state to cooperate with the
18 federal government in order to insure the
19 coordination of the provisions of the federal and
20 state clean air act (RCW 70.94.510).

21 III

22 Pursuant to this and other legislative authority, the state
23 adopted WAC 173-400-075 (1) which provides:

24 The emission standards for asbestos, benzene from
25 fugitive emission sources, beryllium, beryllium
26 rocket motor firing, mercury and vinyl chloride
27 promulgated by the United States Environmental
Protection Agency prior to October 1, 1984, as

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1 contained in 40 CFR Part 61, are by this reference
2 adopted and incorporated herein.

3 From context it appears that the state regulation is designed to
4 incorporate the work practices mandated federally for handling these
5 substances.

6 IV

7 The preamble to the federal asbestos regulations make clear that
8 demolition or renovation contractors are considered "operators" under
9 the regulations. 40 CFR 61.146 provides in relevant part:

10 Each owner or operator to which this section
11 applies shall: (a) provide the administrator (EPA)
12 with written notice of intention to demolish or
13 renovate. . . . as early as possible before
renovation begins. . . .

14 WAC 173-400-075 states that for the purpose of state
15 administration the term "administrator" shall refer to the cognizant
16 local air authority. PSAPCA is that authority in this instance.

17 V

18 40 CFR 61.147 sets forth procedures for owners or operators to
19 prevent emissions of particulate asbestos material to the outside
20 air. These include a requirement for removal of asbestos materials
21 before any wrecking or dismantling that would break up the materials
22 (40 CFR 61.147 (a)), a requirement for wetting asbestos materials they
23 are being stripped off (40 CFR 61.147 (c)), and a requirement for
24 wetting asbestos materials that has been stripped off until they can
25 be collected for disposal (40 CFR 61.147 (c)).

VI

40 CFR 61.152(b) provides in relevant part that owners or operators shall:

Discharge no visible emissions to the outside air during the collection, processing, (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material generated by the source. . . .

VII

Appellants were alleged to have violated the standards set forth in paragraphs IV, V and VI above.

We conclude that these requirements were violated by appellants' asbestos removal operation on July 1, 1985.

VIII

Appellants' defense rests primarily on the assertion that they properly relied on the early inaccurate test results obtained prior to the commencement of work.

These arguments are based on a misperception of the Washington Clean Air Act and its implementing regulations. The statute and agency rules present a strict liability regime. Exceeding the regulatory standards is a violation regardless of the reasons for the occurrence. Commercial and industrial operations are required to comply at all times. In the regulatory context, then, appellants bear the risk that their testing was faulty.

Accordingly, ignorance of the presence of asbestos does not operate to excuse any violation which may attend the problem. Further, that the amount of asbestos was unforeseen and that the

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1 incident did not arise through intentional or negligent conduct is
2 here irrelevant to the question of legal responsibility for a
3 resulting violation.

4 IX

5 We conclude, therefore, that the assessment of a penalty for
6 violation of WAC 173-400-075 and the federal regulations incorporated
7 therein was proper. Moreover, we decide that, in light of all the
8 circumstances--particularly the extraordinarily dangerous nature of
9 asbestos--the amount of the penalty was reasonable and should be
10 upheld.

11 X

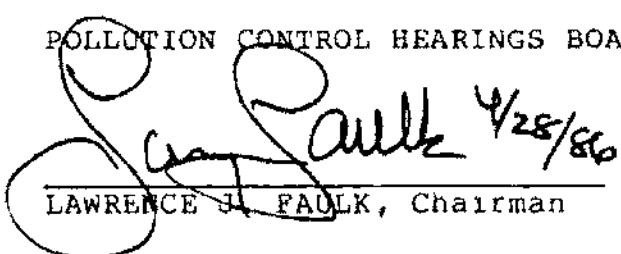
12 Any Finding of Fact which is deemed a Conclusion of Law is hereby
13 adopted as such.

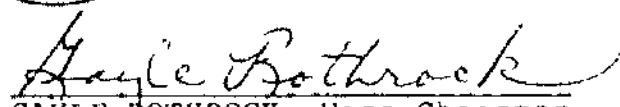
14 From these Conclusions, the Board enters this
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ORDER

The Notice and Order of Civil Penalty (No. 6369) is affirmed.
DONE this 28th day of April, 1986.

POLLUTION CONTROL HEARINGS BOARD

 4/28/86
LAWRENCE J. FAULK, Chairman


GAYLE ROTHROCK, Vice Chairman


WICK DUFFORD, Lawyer Member